

1 Christina A. Jump (admitted *pro hac vice*)
 2 Email: cjump@clcma.org
 3 Samira S. Elhosary (admitted *pro hac vice*)
 4 Email: selhosary@clcma.org
 5 Constitutional Law Center for Muslims in America*
 6 100 N. Central Expy, STE 1010
 7 Richardson, Texas 75080
 8 Telephone: 972-915-2507
 9 *Attorneys for Defendant AJP Educational Foundation, Inc.*

10 **The Constitutional Law Center for Muslims in America*
 11 is the legal division of the Muslim Legal Fund of America.

12 Margaret A. McLetchie (NV Bar No. 10931)

13 Email: maggie@nvlitigation.com

14 Leo S. Wolpert (NV Bar No. 12658)

15 Email: leo@nvlitigation.com

16 McLetchie Law

17 602 S. 10th St.

18 Las Vegas, NV 89101

19 Telephone: 702-728-5300

20 *Local Counsel for Defendant AJP Educational Foundation, Inc.*

21 **UNITED STATES DISTRICT COURT**

22 **DISTRICT OF NEVADA**

23 COREY GERWASKI,

24 Plaintiff,

v.

25 STATE OF NEVADA, ex rel. BOARD
 26 OF REGENTS of the NEVADA
 27 SYSTEM OF HIGHER EDUCATION,
 28 on behalf of the UNIVERSITY OF
 29 NEVADA, LAS VEGAS; KEITH
 30 WHITFIELD, individually; AJP
 31 EDUCATIONAL FOUNDATION, INC.,
 32 a California Non-Profit Corporation;
 33 STUDENTS FOR JUSTICE OF
 34 PALESTINE-UNLV; NATIONAL
 35 STUDENTS FOR JUSTICE OF
 36 PALESTINE; NEVADANS FOR
 37 PALESTINIAN LIBERATION;
 38 DOES I-XX and ROE entities I-XX,

39 Defendants.

40 Case No. 2:24-cv-00985- APG-MDC

41 **DEFENDANT AJP EDUCATIONAL
 42 FOUNDATION, INC.'S REPLY IN SUPPORT
 43 OF ITS MOTION TO DISMISS**

44 **ORAL ARGUMENT REQUESTED**

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I. INTRODUCTION

AMP respectfully moves this Court to dismiss Plaintiff's claims against AMP, and Plaintiff's Response fails to rebut AMP's reasons. Plaintiff fails in three ways: he fails to justify his untimely service of AMP; he fails to properly establish a basis for this Court's jurisdiction over AMP; and he fails to plead non-conclusory facts sufficient to support essential elements of his claims against AMP, even when taken as true. In addition, Plaintiff fails to make a proper request for leave to amend his complaint a second time, attaching no proposed Second Amended Complaint and failing to make no required showing that amendment would be anything but futile. Beyond conclusory statements unsupported by citations to allegations from the Complaint and inflammatory language about things that are supposedly "indisputable," Plaintiff misstates relevant legal standards and then fails to engage with even the standard he sets. Plaintiff claims this case is about "religious discrimination, harassment, and obstruction ... under both Title VII and Title IX," but Plaintiff brings no such claims against AMP. Opposition to Motion to Dismiss at 2, ECF No. 30 (Nov. 3, 2024) ("Response"). Exactly what Plaintiff alleges against AMP remains unclear in the First Amended Complaint and even more muddled by his Response; what does show clearly is that Plaintiff cannot state a claim for relief against AMP for either of the claims he alleges against it.

II. ARGUMENT

A. Plaintiff Fails to Demonstrate Good Cause for His Untimely Service

Plaintiff admits that he failed to serve AMP within the 90-day timeframe provided by Rule 4(m). Response at 4. Instead, he asks this Court to retroactively extend his deadline to serve AMP due to unidentified “reasonable but unsuccessful efforts [that] have been made.” *Id.* at 5. Courts may extend the time to answer for good cause shown. Fed. R. Civ. P. 4(m). However, plaintiffs bear the burden to demonstrate good cause for extensions. *Mitchell v. Cnty. of Nye*, No. 2:15-cv-01714-APG-NJK, 2016 U.S. Dist. LEXIS 157786, at *5 (D. Nev. Nov. 14, 2016). A sufficient showing of good cause requires

1 showing diligence, more than inadvertence or mistake of counsel, at the very least, “excusable neglect.”

2 *Id.*

3 Plaintiff does not demonstrate good cause to support this Court extending his time to serve AMP.

4 Plaintiff filed his original Complaint on May 26, 2024. Therefore, Plaintiff’s deadline to serve AMP
 5 expired on August 26, 2024 (90 days landed on August 24, a Saturday). Fed. R. Civ. P. 4(m). Plaintiff
 6 claims that he attempted to serve AMP before August 26; the first email provided in the Exhibit attached
 7 to his Response, however, bears the date of August 27, 2024 – one day after the expiration of his deadline.

8 *Compare* Response at 6 (“Plaintiff attempted to serve Defendant AJP before August 26, 2024”) *with*
 9 Exhibit 1 (showing Plaintiff’s counsel’s email received of August 27, 2024). Plaintiff also misrepresents
 10 that “Defendant AJP Educational Fund [sic], is particularly cumbersome to serve.” Response at 6.
 11 However, one paragraph later, Plaintiff admits that when he attempted to serve AMP at its office in
 12 Virginia, he was able to do so within a week of his first attempt.¹ ECF No. 10. Plaintiff does not justify
 13 his failure to even attempt service on AMP within the first 90 days after he filed his complaint, instead
 14 of waiting until after the time period expired. *U.S. Bank Tr., N.A. v. Guevara*, No. 2:18-cv-00004-JCM-
 15 NJK, 2018 U.S. Dist. LEXIS 114002, at *2-3 (D. Nev. July 9, 2018) (declining to extend the time to
 16 serve a defendant where the plaintiff failed to account for the delay). Plaintiff relies on an incorrect
 17 citation to a non-binding case as support for a lower standard of good faith, but fails to meet even that
 18 standard. Response at 5 (citing *Nible v. Macomber*, No. 2:24-cv-1259-DJC-CSK, 2024 U.S. Dist. LEXIS
 19 149588 (E.D. Cal. Aug. 21, 2024) (granting an extension to a pro se plaintiff who had attempted to serve
 20 the defendant by mail, which was insufficient)). Plaintiff also fails to demonstrate that AMP had

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 24 ¹ AMP notes as well that their office address is publicly available on their website, which Plaintiff
 presumably determined, because he finally served AMP at that location. *See* AMERICAN MUSLIMS FOR
 PALESTINE, *Contact us*, <https://www.ampalestine.org/contact-us> (last visited Nov. 27, 2024).

1 awareness of this case prior to receiving service. *See* Response at 4.² Plaintiff provides no reasons to
 2 justify his failure to serve AMP within the time limit provided by the Federal Rules, and inappropriately
 3 asks this Court to retroactively excuse his complete lack of diligence. AMP therefore respectfully asks
 4 this Court to dismiss the claims against AMP for lack of timely service.

5 **B. Plaintiff Fails to Demonstrate This Court's Personal Jurisdiction Over AMP**

6 As detailed in its Motion to Dismiss, this Court does not have personal jurisdiction over AMP.
 7 *See* ECF No. 24 at 9-11. In his Response, Plaintiff fails to meet his burden to demonstrate this Court's
 8 personal jurisdiction over AMP. Due process considerations require that defendants have minimum
 9 contacts with the jurisdiction such that "maintenance of the suit does not offend traditional notions of fair
 10 play and substantial justice." *Sternberg v. Warneck*, No. 2:23-cv-01466-APG-EJY, 2024 U.S. Dist.
 11 LEXIS 207453, at *7 (D. Nev. Nov. 14, 2024) (citing *Ranza v. Nike, Inc.*, 793 F.3d 1059, 1068 (9th Cir.
 12 2015)). Both general and specific jurisdiction require some showing that defendants purposefully availed
 13 themselves of the protections and benefits of the jurisdiction. *See generally id.* at *7-10. Where plaintiffs
 14 cannot demonstrate those contacts, courts may dismiss the action.

15 Plaintiff does not present any factual examples in either version of his Complaint, or cite to them
 16 in his Response, other than conclusory statements, of actions AMP took in Nevada, or directed to Nevada
 17 that render personal jurisdiction appropriate in this District. Plaintiff's response argues that his
 18 "Complaint alleges, [sic] one of AMP's purposes is to wreak havoc on college campuses through the
 19 funding of student organizations, like NSJP Chapters on U.S. College [sic] campuses." Response at 8.
 20 Yet, he points to no factual allegations supporting this assertion within his Complaint. Plaintiff instead
 21 alleges that the Students for Justice in Palestine ("SJP") chapter at UNLV and National Students for

22 ² The news article to which Plaintiff presumably intended to cite does not mention this case, nor any
 23 lawsuit against AMP, and was published two months before Plaintiff even filed this case; AMP therefore
 24 struggles to see how this news article gave notice of this lawsuit. *See Michael Casey, Lawsuit filed against*
MIT accuses the university of allowing antisemitism on campus, AP NEWS (Mar. 7, 2024, 1:46 PM),
<https://apnews.com/article/mit-antisemitism-lawsuit-d53c39d623fe961abc724ebd4fc3127e>.

1 Justice in Palestine (“NSJP”) “wreak havoc and intimidate Jewish students” at UNLV and “university
 2 campuses across the nation.”³ Response at 8. Nothing in these conclusory statements points to any action
 3 by AMP in Nevada sufficient to vest this Court with jurisdiction over it.

4 While Plaintiff insists that “there are simply too many allegations of detailed social media posts
 5 directed at UNLV or Defendants to deny that they did not direct activities at UNLV and intend on
 6 influencing UNLV students,” he yet again fails to guide Defendant AMP or this Court to *any* of those
 7 “too many allegations” within his Complaint. *See Wagenaar v. Robison*, No. 2:13-cv-01202-APG-PAL,
 8 2014 U.S. Dist. LEXIS 119112, at *8 (D. Nev. Aug. 21, 2014) (reiterating the Seventh Circuit’s
 9 observation that “judges are not like pigs, hunting for truffles buried in briefs”). Finally, Plaintiff attempts
 10 to rely on AMP’s social media use in general as evidence of its contacts with Nevada. Response at 9.
 11 This contention finds no support in the law, nor does Plaintiff cite any authority to support that argument.
 12 In fact, case law shows that the opposite contention is true *See, e.g., Impossible Foods Inc. v. Impossible*
 13 *X LLC*, 80 F.4th 1079, 1097 (9th Cir. 2023) (“We certainly do not suggest that a company like Impossible
 14 X could be subject to specific jurisdiction in all fifty states … merely because its social media self-
 15 promotion is beamed out through nationwide online marketing efforts.”). As Plaintiff fails to identify any
 16 allegations in his First Amended Complaint supporting this Court’s personal jurisdiction over AMP, this
 17 Court must dismiss the claims against AMP in full.

18 //
 19

20 ³ Plaintiff claims that “NSJP was co-founded by Bazian to provide it on-campus management and control
 21 of hundreds of university chapters of Students for Justice in Palestine.” Response at 8. Both Dr. Bazian
 22 and outside sources refute the claim that Dr. Bazian founded any SJP chapter or NSJP. AMP recognizes
 23 that this is a factual challenge that this Court cannot consider at the Rule 12 stage but presents it here to
 24 maintain the argument for the appropriate time. *See Arno Rosenfeld, The secret history and uncertain*
future of Students for Justice in Palestine, FORWARD (Dec. 20, 2023),
<https://forward.com/news/574014/students-for-justice-in-palestine-history-operations-network-national-sjp/> (identifying as the founder of the first SJP chapter and interviewing Osama Qasem, an English-
 language bookstore owner in Jordan). Nonetheless, for purposes of this Motion only, AMP recognizes
 this Court accepts all reasonable, non-conclusory allegations as true.

1 **C. Plaintiff Fails to State a Claim For Any Relief Against AMP**

2 To survive AMP’s motion to dismiss for failure to state a claim, Plaintiff must “[a]t a minimum
 3 ... state ‘enough facts to state a claim to relief that is plausible on its face.’” *Jackson v. Moderna*, No.:
 4 2:23-cv-02157-APG-EJY, 2024 U.S. Dist. LEXIS 199259, at *3 (D. Nev. Oct. 31, 2024) (quoting *Bell*
 5 *Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). Even accepting all allegations in the Complaint as
 6 true, as required at this stage, if plaintiffs fail to plead facts sufficient to support an essential element of
 7 their claims, courts must dismiss the action. *Id.* at *7 (dismissing a § 1983 claim brought only against
 8 private actors not covered by the relevant statute). The presumption of truth does not apply to “mere
 9 conclusions,” which plaintiffs must support with factual allegations. *Thomas v. Harroun*, 2:24-cv-00345-
 10 APG-MDC, 2024 U.S. Dist. LEXIS 172163, at *3 (D. Nev. Sept. 24, 2024). Plaintiff admits he does not
 11 plead facts supporting the essential elements of his Anti-Terrorism Act (“ATA”) or Intentional Infliction
 12 of Emotional Distress (“IIED”) claims, and therefore AMP asks this Court to dismiss the action in full.

13 1. Plaintiff fails to sufficiently allege an ATA claim against AMP

14 The ATA provides a method of redress for those suffering from harm that results from a particular
 15 set of circumstances, not just any harm with a loose correlation to any general allegations of terrorism as
 16 Plaintiff seems to assert. Response at 13 (arguing that but for AMP’s actions “legitimizing the acts of
 17 Hamas,” Plaintiff “and other Jewish students would’ve never been subjected to the abuse and harassment
 18 they had been to [sic]”). To properly state a claim under the ATA, as amended by the Justice Against
 19 Sponsors of Terrorism Act (“JASTA”), U.S. nationals must demonstrate 1) they suffered injury by an act
 20 of international terrorism; 2) the defendant knowingly aided and abetted such act; and 3) the defendant
 21 provided substantial assistance to the terrorist actor. 18 U.S.C. § 2333(a) and (d). Plaintiff recognizes he
 22 fails to meet any of those three elements. *See, e.g.*, Response at 12 (admitting that “Gerwaski was not
 23 personally affected by October 7”).

24 Plaintiff acknowledges he did not suffer injury based on an act of international terrorism with the

1 statutory definition.⁴ Instead, he alleges nebulous, undefined injuries resulting from purely domestic acts.
 2 Response at 13 (stating with no citation to supporting allegations that AMP undertook “wrongful acts in
 3 the United States”). Plaintiff cannot support his ATA claim against AMP based solely on “FTOs acts
 4 months after October 7, 2023, that are supported by Defendants here on UNLV’s campus.” *Id.* (providing
 5 no citation to the Complaint as to where he alleges what acts which defendants took). Plaintiff fails even
 6 to delineate what injury he allegedly suffered beyond conclusory statements, with no citation to his
 7 Complaint, that “egregious acts … directly caused damages to Mr. Gerwaski.” *Id.* at 14.

8 Further, Plaintiff presents no allegations that AMP knowingly aided and abetted an act of
 9 international terrorism, nor that AMP substantially assisted a terrorist actor. Instead, he presents
 10 allegations about things other Defendants allegedly did or said and then makes the unsupported leap that
 11 AMP encouraged or blessed those other actors. *Id.* at 13 (“As demonstrated in social media posts in the
 12 FAC, every call to action by Hamas is equally mirrored and reciprocated with a call to action at UNLV,
 13 held by NSJP and SJP-UNLV along with other student and non-student organizations”). Plaintiff alleges
 14 that his “FAC provides 27 pages of extensive facts creating a direct nexus between Hamas, Defendants
 15 AMP, and UNLV’s substantially assisting and complicity,” but, again, provides no guiding citation to
 16 where this Court may find those 27 pages among Plaintiff’s 77-page First Amended Complaint. *See*
 17 *Wagenaar*, 2014 U.S. Dist. LEXIS 119112, at *8 (declining to “scour those 39 pages to decipher whether
 18 Plaintiffs’ allegations are rooted therein”).

19 2. Plaintiff fails to plead facts sufficient to support his IIED claim

20 Plaintiff fails to satisfy the required elements to state a claim for relief for Intentional Infliction
 21 of Emotional Distress (“IIED”). Well-established case law in this District, applying Nevada law, sets a
 22 very high burden on plaintiffs, even at the motion to dismiss stage, “to prove that the defendant engaged
 23

24 ⁴ The statute defines an act of international terrorism with three elements, outlined fully in Defendant AMP’s Motion to Dismiss. ECF No. 24 at 12-13.

1 in extreme and outrageous conduct that intentionally or recklessly caused severe emotional distress or
 2 bodily harm.” *Burnett v. SYB, LLC*, Case No. 2:20-cv-00029-APG-BNW, 2021 U.S. Dist. LEXIS
 3 123333, at *10 (D. Nev. July 1, 2021). The acts must be “so severe and of such intensity that no reasonable
 4 person could be expected to endure it.” *Cipriani v. Resorts World Las Vegas, LLC*, No. 2:23-cv-01626-
 5 MMD-MDC, 2024 U.S. Dist. LEXIS 193167, at *22 (D. Nev. Oct. 23, 2024). Plaintiff fails to even come
 6 close to alleging sufficiently extreme acts by AMP. At the motion to dismiss stage, Plaintiff need not
 7 fully prove his claims, but must still allege plausible facts that satisfy these elements. Conclusory
 8 allegations do not suffice; unsupported arguments in a Response do not either.

9 Plaintiff fails to allege extreme and outrageous conduct sufficient to form the basis for an IIED
 10 claim. Plaintiff argues – without citation to any supporting allegations in his Complaint – that AMP is
 11 “an organization that encourages antisemitic [sic] vitriol and incites violence against Jewish students at
 12 UNLV.” Response at 16.⁵ Plaintiff’s conclusory statement that “encouraging and facilitating the harm of
 13 Jewish students and ‘Zionist presence’ at UNLV goes outside of all possible bounds of decency” amounts
 14 to no more than a rote regurgitation of an element of the claim, yet he still fails to cite to where in
 15 Plaintiff’s Complaint those allegations against AMP exist. *Id.*; *see Jackson*, 2024 U.S. Dist. LEXIS
 16 1998259, at *2 (reiterating that a complaint must include allegations beyond a “formulaic recitation of
 17 the elements of a cause of action”). As explained more fully in AMP’s motion to dismiss, even if such
 18 allegations appeared in Plaintiff’s Complaint, they are still insufficient to state a claim for relief. *See* ECF
 19 No. 24 at 15-16.

20 Plaintiff also fails to sufficiently allege how he suffered harm, relying instead on the conclusory
 21 statement that he “suffered great humiliation, embarrassment, shame, and other pain and suffering.”
 22
 23

24 ⁵ AMP notes that Plaintiff provides a citation here to “ECF 6, 24; 3-12,” but AMP is not able to determine
 what that citation references, as neither Plaintiff’s Amended Complaint (ECF No. 6) nor AMP’s Motion
 to Dismiss (ECF No. 24) include support for this contention on their respective pages 3-12.

1 Response at 16.⁶ As set forth more fully in AMP’s Motion to Dismiss, this does not suffice. ECF No. 24
 2 at 16-17. This Court may therefore dismiss Plaintiff’s IIED claim for failure to plead any of the essential
 3 elements.

4 **D. Plaintiff Fails to Show Why AMP’s Speech Loses First Amendment Protection**

5 Plaintiff fails to identify any statements or acts by AMP that fall within the “well-defined and
 6 narrowly limited classes of speech” he identifies as lacking First Amendment protection. Response at 17
 7 (citing *United States v. Stevens*, 559 U.S. 460, 468-72 (2010)). Plaintiff does not sufficiently allege that
 8 any speech at issue by AMP are “true threats” or constitute aid to terrorist groups.

9 Plaintiff does not identify any speech or act by AMP that qualifies as “true threats,” nor any speech
 10 or act that constitutes “material support to terrorists.” *Id.* at 17-18. For speech to constitute a “true threat,”
 11 and lose First Amendment protection, the Ninth Circuit considers whether “a reasonable person would
 12 foresee that the statement would be interpreted by those to whom the maker communicates the statement
 13 as a serious expression of intent to harm or assault.” *Thunder Studios, Inc. v. Kazal*, 13 F.4th 736, 746
 14 (9th Cir. 2021).

15 Plaintiff argues that “[c]alls for the extermination of Jews resulting in adverse actions against
 16 Jewish students” represent “true threats.” Once again, however, Plaintiff provides no citation to where in
 17 his First Amended Complaint he alleges AMP made such calls. Response at 17. Even if it were true, this
 18 assertion fails based on Plaintiff’s failure to tether his conclusory statement to any factual allegations.
 19 Plaintiff similarly fails to point to any acts or speech by AMP that constitute material support to terrorism,
 20 as explained above and in AMP’s Motion to Dismiss. *Contra Holder v. Humanitarian Law Project*, 561
 21 U.S. 1, 30 (2010) (criminalizing non-violent aid to a known terrorist organization because it may “free
 22 up” resources for the organization’s violent acts); *Boim v. Holy Land Found. for Relief & Dev.*, 549 F.3d
 23

24 ⁶ Plaintiff seeks leave to amend to cure his pleading defects; as explained more fully below, his request
 in this form is both insufficient and futile.

1 685, 700 (7th Cir. 2008) (penalizing donations to an organization with knowledge that the organization
 2 was committing terrorist acts). Plaintiff sets out no acts by AMP that he believes fit within this material
 3 support framework, and thereby warrant the loss of First Amendment protections. *See generally* Response
 4 at 18-19 (describing the framework, but not providing application). This Court need not excuse Plaintiff's
 5 lackluster briefing by filling in gaping holes in his argument for him, and may dismiss his claims against
 6 AMP because all of the acts Plaintiff alleges AMP undertook find protection in the First Amendment.

7 **E. Plaintiff Fails to Properly Seek Leave to Amend**

8 Plaintiff asks in his Response for leave to amend his Complaint a second time to cure the myriad
 9 of deficiencies in his pleading. Response at 19. His request does not suffice.

10 First, this request does not suffice under Federal Rule of Civil Procedure 7(b), which requires
 11 Plaintiff to separately move to amend and attach his proposed new Amended Complaint for this Court's
 12 substantive review. *See Adkisson v. Dzurenda*, No. 3:23-cv-00287-MMD-CLB, 2024 U.S. Dist. LEXIS
 13 56154, at *3 (D. Nev. Mar. 27, 2024) (denying leave to amend where the plaintiff did not attach a
 14 proposed amended complaint).

15 Second, allowing amendment at this point would be futile, as no possible cure exists for Plaintiff's
 16 pleading deficiencies. *See McAteer v. Sunflower Bank, N.A.*, Case No. 2:20-cv-02285-APG-AJY, 2022
 17 U.S. Dist. LEXIS 241886, at *8 (denying leave to amend as futile where the plaintiff could not plead an
 18 essential element of his claim). Plaintiff asserts the question "is not whether plaintiff will prevail but
 19 whether he 'is entitled to offer evidence to support the claims.'" Response at 20 (citing *Diaz v. Int'l*
 20 *Longshoremen's & Warehousemen's Union, Local 13*, 474 F.3d 1202, 1205 (9th Cir. 2007)). However,
 21 as described above, Plaintiff fails to make factual allegations to support multiple essential elements of
 22 both his ATA claim and his IIED claim against AMP, and asserts no other claims against it. Therefore,
 23 he provides his Court with no reason to believe he could correct those deficiencies by amendment. AMP
 24 therefore respectfully requests this Court dismiss Plaintiff's claims against it in full, and with prejudice.

III. CONCLUSION

2 Plaintiff asserts that “[a] careful review of Plaintiff’s FAC will demonstrate that in the course of
3 the 77-page Complaint, AMP’s complicity in the events that are the subject of this suit are irrefutable ...”
4 Response at 20. Plaintiff, however, fails to undertake that “careful review” himself. Plaintiff provides
5 neither this Court nor AMP with citations to where he makes factual allegations in his loquacious, 77-
6 page First Amended Complaint that satisfy the legal standard. Even after considering the arguments in
7 his Response, Plaintiff still fails to state any cognizable claim against AMP. As set forth in AMP’s
8 Motion, Plaintiff establishes neither the jurisdiction of this Court nor any properly pled claims against
9 AMP. Therefore, AMP respectfully requests this Court dismiss Plaintiff’s claims in full, and deny his
10 procedurally unsound request to amend.

Dated: December 2, 2024

Respectfully submitted,

/s/ Christina A. Jump
Christina A. Jump (admitted *pro hac vice*)
Email: cjump@clcma.org
Samira Elhosary (admitted *pro hac vice*)
Email: selhosary@clcma.org
Constitutional Law Center
for Muslims in America*
100 N. Central Expy, Suite 1010
Richardson, Texas 75080
Telephone: 972-915-2507

Counsel for Defendant AJP Educational Foundation, Inc.

**The Constitutional Law Center for Muslims in America is the legal division of the Muslim Legal Fund of America*

111

1 Maggie McLetchie (NV Bar No. 10931)
2 Email: maggie@nvlitigation.com
3 Leo S. Wolpert (NV Bar No. 12658)
4 Email: leo@nvlitigation.com
5 McLetchie Law
6 602 S. 10th St.
7 Las Vegas, NV 89101
8 Telephone: 702-728-5300
9 *Local Counsel for Defendant AJP Educational*
10 *Foundation, Inc.*

11 **CERTIFICATE OF SERVICE**

12 I HEREBY CERTIFY that on this 2d day of December, 2024, I electronically filed the foregoing
13 with the Clerk of Court using the CM/ECF system, which will send a notice of electronic filing to all
14 counsel of record.

15 /s/ Christina A. Jump
16 Christina A. Jump (admitted *pro hac vice*)
17 Email: cjump@clcma.org
18 Samira Elhosary (admitted *pro hac vice*)
19 Email: selhosary@clcma.org
20 Constitutional Law Center
21 for Muslims in America*
22 100 N. Central Expy, Suite 1010
23 Richardson, Texas 75080
24 Telephone: 972-915-2507

25 *Counsel for Defendant AJP Educational*
26 *Foundation, Inc.*

27 **The Constitutional Law Center for Muslims in*
28 *America is the legal division of the Muslim Legal*
29 *Fund of America*